Supreme Court of the United States.

No. 248.—October Term, 1905.

Thomas H. Hulbert, Plaintiff in Error, vs. The City of Chicago. } In error to the Supreme Court of the State of Illinois.

[May 14, 1906.]

Mr. Justice McKenna delivered the opinion of the Court.

Error to the judgment of the Supreme Court of the State of Illinois affirming a judgment of the County Court of Cook County, confirming an assessment to defray the cost of paving a street in the city of Chicago.

The proceeding was commenced by a petition filed by the city in the County Court of Cook County in accordance with law of the State. The petition recited an ordinance of the city providing for the improvement of the street, and prayed "that steps be taken to levy a special assessment for said improvements in accordance with the provisions of said ordinance, and in the manner prescribed by law."

An order was made in accordance with the prayer. An assessment and report thereon were duly made with an assessment roll attached, which exhibited the property of plaintiff in error as assessed and the amount for which it was assessed.

In pursuance of notice given to all parties to file objections to the confirming of the assessment rule, plaintiff in error filed objections thereto. Among his objections were the following:

"Said act concerning local improvements, passed June 14, 1897, and all amendments thereto, are not only contrary to the constitution of Illinois, but they are also contrary to the Constitution of the United States and to the Fourteenth Amendment thereof.

"Said act concerning local improvements, said ordinance, which is the basis of the present proceedings, and all documents and orders relating thereto, are contrary to the Constitution of the United States, and to the Fourteenth Amendment thereof, because such act, ordinance, document and orders seek to deprive objector of property without due process of law.

"Said ordinance and proceedings are in other respects illegal, unconstitutional and void.

"The proceedings herein and said act are contrary to the Constitution of the United States, and to the Fourteenth Amendment thereof, because the petitioner herein, under and by virtue of said act and of said proceedings, seeks to deprive these objectors of their property without due process of law. Said proceedings and said act are also contrary to the Constitution of the United States, and to the Fourteenth Amendment thereof, for the reasons set forth in the several foregoing objections."

The case came on for hearing before the court, the right of a jury on the question of benefits having been expressly waived.

Petitioner (defendant in error) introduced the petition, assessment roll and notice. They were received in evidence, though objected to as not complying with or meeting the requirements of the statute.

Plaintiff in error to sustain the issues "on the question of the legal objections" offered in evidence the various resolutions and proceedings before the board of local improvements. They are set out in the record, but it is not necessary to quote them. No other evidence was offered. The court overruled the objections.

On the question of benefits the same evidence was offered by the respective parties. Plaintiff in error objected to the documents offered by the city on the ground that the ordinance was illegal and void, because the first resolution of the board of local improvements in regard to assessments did not contain an itemized estimate of the cost of the improvements made by the engineer, in the manner and form required by the statute.

The objection was overruled and the assessment confirmed with some modification not necessary to notice. The judgment was affirmed by the Supreme Court of the State.

The bill of exceptions shows that plaintiff in error did not bring to the attention of the trial court that the act of the State under which the assessment was made, or any of the proceedings, were contrary to the Fourteenth Amendment to the Constitution of the United States, nor did he assign as error on appeal to the Supreme Court that the rulings of the trial court or its judgments [illegible]nged that amendment.

All the questions submitted to the Supreme Court and all the questions passed on by it depended upon the construction of the statute or the compliance of the proceedings with the statute, except that it was contended that the sections of the act which provided for the division of the assessment into installments and the issue of bonds to anticipate the payment of the installments to bear five per cent interest was unconstitutional, in that the legislature had no power to fix the rate of interest, and that by so doing a lower rate of interest was prevented, and plaintiff in error thereby deprived of his property without due process of law. The court decided against both contentions, holding that "the legislature had the right to fix the rate of interest which said installments and bonds when issued should bear," and sections 42 and 86 of the local improvement act "are not in conflict with the constitution." That is, the constitution of the State.

We do not think that the plaintiff in error complied with section 709 of the Revised Statutes in setting up a right under the Constitution of the United States. The mere claim in the objections to the confirming of the assessment, never afterwards brought to the attention of the trial court or of the Supreme Court, was not sufficient. There is no evidence in the

record to show that the decision of either of the courts was invoked by plaintiff in error upon a right claimed under the Constitution of the United States.

It is urged that in the writ of error and petition for citation it is stated that certain rights and privileges were claimed under the Constitution of the United States, and that the Supreme Court of the State of Illinois decided against such rights and privileges, and, it is further urged, that the chief justice of the court allowed the writ of error. This is not sufficient. (*Marvin* v. *Trout*, 199 U. S. 212, 223.)

Nor was a right under the Constitution of the United States necessarily involved in the determination of the cause. And the Supreme Court was justified by its rulings in omitting the consideration of rights under the Constitution of the United States. According to the practice of the court an error not assigned is not open to review. (*Berry* v. *City of Chicago*, 192 Ill. 154, 155.) Errors assigned but not noticed or relied on in the brief or argument of counsel will be regarded as waived or abandoned. (*Keyes* v. *Kimmel*, 186 Ill. 109, 114.) And such rule of practice will be recognized by this court. (*Erie Railroad Co.* v. *Purdy*, 185 U. S. 148, 153.) It follows that this court has not jurisdiction of this writ of error. (*Oxley Stave Co.* v. *Butler Co.*, 166 U. S. 648; *Capital City Dairy Co.* v. *Ohio*, 183 U. S. 238; *Chapin* v. *Fye*, 179 U. S. 127.)

Writ dismissed.

True copy.

Test:

Clerk Supreme Court, U. S.